

III. CONCLUSION; SUMMARY OF RELIEF REQUESTED

For the reasons set forth herein, Aventure requests that the FCC reverse the IAD audit findings and Administrative's Decision of October 29, 2013. If, as Aventure argues, USAC "made new law" in its audit findings and Administrative's Decision, that decision should have prospective application only. Aventure respectfully requests that USAC's decision to recover **begin confidential....end confidential** in federal Universal Service High Cost Program from Aventure be reversed and dismissed.



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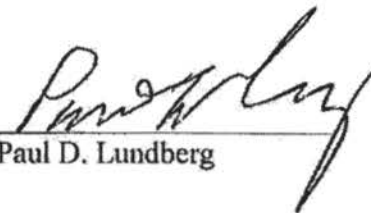
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Certificate of Service

I, Paul D. Lundberg do hereby certify that I have caused the foregoing Request for Review by Aventure Communication Technology, L.L.C. of Decision of the Universal Service Administrator to be served on the Universal Service Company at the following address as provided by the Universal Service Administrative Company:

Universal Service Administrative Company
Letter of Appeal
Billing, Collections, and Disbursements
2000 L Street, N.W., Suite 200
Washington, D.C. 20036

Dated May 5, 2014.


Paul D. Lundberg

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ATTACHMENT 1



High Cost and Low Income Division

By Certified Mail, Return Receipt Requested

December 18, 2012

Bradley Chapman
CFO
Aventure Communication Technology, LLC
401 Douglas Street, Suite 409
Sioux City, IA 51101-1471

Re: Action to be Taken Resulting from High Cost Audit of Aventure Communication Technology, LLC (SAC 359094) Audit Report HC2011BE011

Mr. Chapman:

An audit of Aventure Communication Technology, LLC (Aventure) for Study Area Code (SAC) 359094 was conducted by USAC Internal Audit Division. The final report from that audit was recently sent to the company.

USAC's auditors determined that Aventure included ineligible lines in its quarterly line counts filed in order to receive High Cost Program support for support years 2007 through 2011. As such, USAC will recover all support paid on the ineligible lines outlined in the audit report. For support years 2007 through 2011, USAC will recover [REDACTED] of High Cost Program support. For January 2012 through October 2012, USAC will recover [REDACTED] of frozen High Cost Program support. The total amount of support to be recovered will be [REDACTED].

USAC will recover these previously disbursed High Cost funds from Aventure's February 2013 High Cost Program support payment, which will be disbursed at the end of March 2013. If the recovery amount exceeds the company's disbursement for that month, USAC will invoice and collect any remaining amounts owed.

Beginning with the November 2012 support payments, USAC will reduce Aventure's monthly frozen High Cost Program support to include eligible lines only. Aventure's revised monthly frozen support amount will be [REDACTED].

If you wish to appeal this decision, you may file an appeal pursuant to the requirements of 47 C.F.R. Part 54 Subpart I. The appeal must be filed within 60 days of the date of this letter as required by 47 C.F.R. § 54.720(a). Detailed instructions for filing appeals are available at:

<http://www.usac.org/hc/about/program-integrity/appeals.aspx>

Sincerely,

//s// Universal Service Administrative Company

ATTACHMENT 2

Arent Fox

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CONFIDENTIAL
PROPRIETARY

February 18, 2013

VIA E-MAIL

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LETTER OF APPEAL

High Cost and Lifeline
Universal Service Administrative Company
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HCLI-IndustrySupport@usac.org

Re: LETTER OF APPEAL: Independent Auditor's Report on Adventure Communication Technology, L.L.C.'s Compliance with High Cost Support Mechanism Rules (SAC 359094) (USAC Audit No. HC2011BE011)

To the High Cost and Low Income Division:

This Letter of Appeal is submitted by Adventure Communication Technology, L.L.C. ("Adventure"), by its undersigned counsel, in response to USAC's letter to Bradley Chapman, CEO of Adventure, dated December 18, 2012, and pursuant to the rules of the Universal Service Administrative Company ("USAC") and Sections 54.719-54.725 of the rules of the Federal Communications Commission ("FCC"), 47 C.F.R. §§ 54.719-54.725. This letter asks USAC to reverse the conclusions set forth in the Independent Auditor Report, issued by USAC and the Internal Audit Division ("IAD"), dated May 15, 2012, and in the USAC Management Response appended to that same document at pages 71-82 (together, the "IAD Report"). As Adventure demonstrates in this letter, the IAD Report is premised on a factual misunderstanding of the circuits and services at issue, and is inconsistent with the FCC's rules and orders.

The IAD Report concludes that Adventure incorrectly reported lines associated with calls to conference operators on the Adventure network as USF-eligible lines. The Report bases this conclusion on five findings:

1. The Adventure lines do not carry supported services.
2. The Adventure lines are not "revenue producing."
3. The Adventure lines are dedicated, high capacity Special Access circuits.
4. No calls terminated to locations within the Adventure service area, because the conference bridge locations cannot be defined as "end user" premises.

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5. Adventure's designation as an Eligible Telecommunications Carrier ("ETC") is in doubt.

As Adventure discusses in this Letter of Appeal, these findings are wholly unsupported, and cannot be maintained. In fact, Adventure has already made this demonstration in its Opposition to the IAD's draft Detail Exception Worksheet ("DEW"), which was submitted to USAC on May 15, 2012. The *IAD Report* fails to rebut any of Adventure's showings, but rather simply states its disagreement with Adventure's showings, or disregards them altogether. Below, Adventure again addresses the findings of the IAD, and demonstrates that they cannot be supported. Moreover, Adventure demonstrates that IAD can cite no precedent to support its findings and conclusions – all of its interpretations of FCC rule language, and its attempts to extrapolate from FCC decisions not on point, are novel interpretations of the rules, and a case of first impression. While IAD may establish new policies and interpretations regarding these matters, such new decisions can have only prospective effect.

I. THE IAD REPORT CONTAINS ALL THE ADMISSIONS NECESSARY TO PROVE ADVENTURE'S CASE

As discussed in this Letter of Appeal, the *IAD Report* does not present any precedential support of its conclusion that Adventure incorrectly reported lines carrying voice calls to conference bridges as eligible for High Cost support. Rather, the *Report* simply restates its earlier conclusions and dismisses without substantive analysis the arguments from Adventure's Opposition, or ignores them altogether. The *IAD Report* is significant in one respect, however – it contains admissions of fact and law sufficient to support Adventure's arguments, and to reverse the *IAD Report's* conclusions. These admissions are:

- The FCC's *Connect America Order*¹ "did revise the supported services." Report at 66.
 - The Adventure Opposition cites to this Order as grounds to reverse the *IAD Report's* conclusion that Adventure's calls do not "terminate" in its service area, that it's "end user" customers are not located in its service area, and that Adventure's loops are not "revenue producing." Adventure Opposition at 9,11-12.
 - As discussed further below, the *IAD Report's* attempt to dismiss the applicability of the *Connect America Order* to the audit at issue in this case are wrong as a matter of law. The *IAD Report's* admission of the impact of the *Connect America Order* compels rejection of these findings.
- Adventure provided massive amounts of documentary evidence, which Adventure submitted to demonstrate that it provided terminating access service and that all of its lines are "revenue producing." Opposition at 8. The *IAD Report* states "IAD

¹ *Connect America Fund*, 26 FCC Rcd 17663 (2011).
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- acknowledges that Beneficiary provided the documentation as described.” *IAD Report* at 64-65.
- o IAD goes on to argue that all of the documentation provided by Aventure is either inadequate or irrelevant, based on its theory that Aventure’s calls do not “terminate” in its service area, and that Aventure has no “end user” customers in its service area. *IAD Report* at 64-65.
 - o As discussed below, IAD’s theories about termination and end users must be dismissed as a matter of law. Absent these theories, Aventure’s evidence is probative of the fact that Aventure’s reported lines are active and “revenue generating,” and IAD’s acknowledgement requires that the evidence be considered in support of Aventure’s case.
- The *IAD Report* concedes that voice grade lines carried over high capacity circuits are eligible for High Cost Support. The *Report* states that, if Aventure was connected to the conference bridges by DS1 lines, instead of DS3s, it could collect USF. *IAD Report* at 61.
 - IAD acknowledges, as it must, that Aventure’s conference bridges are located in its end office facility in Salix, Iowa (*IAD Report* at 62), and that Salix is within the Aventure service area approved by the Iowa Utilities Board (“IUB”) (*id.*). “All calls were terminated at the FCSC’s respective DS3 equipment located at the central office in Salix, Iowa.” *Id.*
 - The term “terminate” on which the *IAD Report* relies, “is not explicitly defined in the audit finding. . . .” *IAD Report* at 62.

These admissions confirm that Aventure has documented its line counts and termination points for the lines it has reported; and that FCC rules govern the services it provides. Below, Aventure demonstrates that IAD’s only stated objections do not reflect incorrect reporting, but rather interpretations of federal telecom law and policy that cannot be justified in light of the precedent that Aventure has provided.

II. THE CONCLUSION THAT AVENTURE DOES NOT PROVIDE SUPPORTED SERVICES MISREADS THE PLAIN LANGUAGE OF § 54.101 OF THE COMMISSION’S RULES AND IGNORES AVENTUE’S ARGUMENTS

The primary rationale for the *IAD Report*’s conclusion that Aventure’s reported lines are not eligible for High Cost support is that Aventure’s service to conference operators does not “provide” the functionalities required by 47 C.F.R. § 54.101(a). *IAD Report* at 3, 8, 57-60 and *passim*. On pages 5-6 of the *Report*, the IAD lists the specified “services or functionalities that shall be supported by federal universal service support mechanisms,” and concludes that

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Aventure does not provide all of the functions, and so its reported lines are not eligible for High Cost support.

The *IAD Report* can only reach this conclusion by conflating the terms “offering” and “providing.” Section 54.101(b) states that “An eligible telecommunications carrier must offer voice telephone service as set forth in paragraph (a) of this section in order to receive federal universal service support. But IAD reads this provision as requiring an ETC to provide all enumerated services. This inconsistency is illustrated by the *IAD Report*’s summary Condition: “The Beneficiary did not provide the FCSC customers with single-party service or its functional equivalent, access to emergency services, access to operator services, or access to directory assistance. To receive federal universal service support, an ETC must offer each of the services set forth in 47 C.F.R. § 54.101(a).” *IAD Report* at 8 (emphasis added). So while the *IAD Report* correctly reflects the language of the rules, it applies the rules in direct contravention of that language.

Aventure directly addressed this issue in its Opposition at 2-4, and demonstrated that its switch contains all the functions required by § 101.54(a) and (b), and in fact does provide these features to its full-service retail customers. In response, the *IAD Report* simply reasserts the conclusions from the DEW that Aventure does not “provide” these functionalities in terminating calls to conference operators. IAD states that calls to conference bridges are “one way” terminating services, and so do not provide in-bound and outbound calling service (*Report* at 57-58), emergency 911 service (*id.* at 58-59), operator service and directory assistance (*id.* at 59), and concludes that this failure to provide such services renders Aventure’s lines to conference bridges ineligible for High Cost support.

In making this finding, IAD is establishing a new *per se* rule of law – no one-way circuits can be supported by High Cost USF. However, nowhere in the *IAD Report*, the DEW, or in other communications with IAD or USAC personnel has IAD identified any FCC or federal court decision that supports this finding. IAD has had no lack of opportunity to present such precedential support – counsel for Aventure first asked this question of IAD Staff in the DEW post-audit conference call held on May 8, 2012. Aventure made the point that the DEW conclusions were completely unsupported by precedent throughout its Opposition. Finally, Aventure submitted a Freedom of Information Request to the FCC, and copied USAC, on May 15, 2012. That request expressly requested if the FCC, USAC or the courts had ever issued any decisions regarding whether circuits carried over high capacity lines to terminate service to conference and chat line operators are eligible for High Cost support. See Aventure Opposition at Attachment 6. Since filing, the FCC and Aventure have come to agreement on the price of any necessary research related to the FOIA request, but the FCC has to date not responded to Aventure’s FOIA request. Neither the IAD nor the FCC have provided any evidence of a

decision by IAD, USAC, the FCC or a federal court to support the *IAD Report's* interpretation of the language of §54.101, and to the best of Adventure's knowledge, no such precedent exists.

Finally, the *IAD Report* states that an Adventure officer "verbally admitted that all of the FCSC accounts did not have access to and were not set-up for emergency services, operator services or directory assistance." Adventure vehemently denies this assertion. At all times during the audit, and in its written communications with USAC and IAD, Adventure has confirmed that its switch is a fully functional "Class 4/5" switch and is equipped to provide emergency calling, operator services and directory assistance, and that Adventure provides these services to its more than 300 retail service users. Adventure Opposition at 3. Adventure does not provide these services to its conference operator customers because they cannot use such services.

III. THE IAD REPORT'S CONCLUSION THAT THE SERVICES AT ISSUE ARE SPECIAL ACCESS DEDICATED CIRCUITS IS WRONG AS A MATTER OF FACT AND LAW

The *IAD Report* concludes that the facilities used by Adventure to terminate voice grade calls to its conference operator customers are DS3 special access services, and so are not eligible for High Cost support. *IAD Report* at 60, 73. The *Report* expressly states that it ignores Adventure's arguments that analogize its transport circuits to voice grade circuits transmitted over PBX or Centrex services. *Id.* at 60. Finally, IAD concludes that the Adventure service is "merely a DS3 circuit with no direct connection to any specific end user." *Id.* at 71. As discussed below, in all respects, the *IAD Report* is wrong.

A. The Commission's Rules Make Clear That Voice-Grade Switched Access Lines Terminated Over High Capacity Circuits Are Not "Special Access"

The *IAD Report* cites several sections of the FCC's Part 36 rules, and interprets their language as determinative that the facilities used by Adventure to terminate voice grade calls to its conference operator customers must be defined as DS3 special access circuits. *Report* at 61, 73. In making its conclusions, the IAD cites to no precedent – no FCC or court decisions that apply the language of the rules in the way IAD asserts. In fact, there is no precedent that can support the IAD's interpretation of the rules language. In fact, the plain language of more specific rules under part 51, and industry practice as documented by NECA presentations, proves the contrary.

Part 51.5 of the Commission's rules contains the definition of "business line":

Business line. A business line is an incumbent LEC-owned switched access line used to serve a business customer, whether by the incumbent LEC itself or by a competitive LEC that leases the line from the incumbent LEC. The number of

business lines in a wire center shall equal the sum of all incumbent LEC business switched access lines, plus the sum of all UNE loops connected to that wire center, including UNE loops provisioned in combination with other unbundled elements. Among these requirements, business line tallies:

- (1) Shall include only those access lines connecting end-user customers with incumbent LEC end-offices for switched services,
- (2) Shall not include non-switched special access lines,
- (3) Shall account for ISDN and other digital access lines by counting each 64 kbps-equivalent as one line. For example, a DS1 line corresponds to 24 64 kbps-equivalents, and therefore to 24 "business lines."

47 C.F.R. § 51.5 (emphasis added). The language of Part 51 of the Commission's rules, which is more specific in defining what constitute "lines" for filing purposes, must take precedent over IAD interpretations of less specific rule language. Moreover, as discussed in the following sections, this interpretation of the more specific rule language is fully supported by NECA publications and FCC rulings.

In addition, the IAD conclusion that the Aventure facilities do not directly connect with an end user, and so do not meet the definition of Category 1 Loops under 47 C.F.R. § 36.152(a)(1) (*IAD Report* at 71) is wrong as a matter of fact and law. Section IV, below describes in detail that, under controlling FCC precedent, as a matter of law, Aventure's conference operator customers are "end users."

B. The FCC's Reports And Reporting Instructions Have Always Defined Special Access Service As A Non-Switched Service

Special access service – including DS1 and DS3 service – has always been described by the FCC as "non-switched" service.² In contrast, switched services provided over high capacity circuits have consistently been reported according to the voice grade circuits they carry: "For switched loops served via a concentrator or carrier system, count the actual number of customer lines served, not the transmission channels at the wire center." Federal-State Board on Universal Service, 12 FCC Rcd 9803, 9806 (1997). "ISDN and other digital access lines should be reported as 64 kbps equivalents. A fully-equipped DS-1 line, for example, corresponds to 24 64 kbps equivalents." Revision of ARMIS annual Summary Report (FCC Report 43-01), 17 FCC Rcd 25421, 25450 (2002) (emphasis added).

² E.g., Industry Analysis and Technology Division, Local Telephone Competition: Status As Of December 31, 2011, 2013 WL 164840 (F.C.C., Public Notice, January 2013) at 48.
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In Attachment 5 to its Opposition, Aventure provided extensive evidence that the service it provided to its conference operator customers was switched access service, which generated call billing detail that accounted for minutes of traffic at each NPA-NXX assigned to a conference operator customer. Only switched services can generate this type of information – special access circuits cannot. Given the FCC's well-documented and consistent treatment of switched access services carried over high-capacity facilities, the *IAD Report's* conclusion that Aventure's DS3 facilities are special access must be reversed.

C. NECA Has Made Clear That Voice-Grade Switched Access Services Terminated Over High Capacity Circuits Are Not "Wideband" Or "Special Access"

The *IAD Report* concludes that Aventure's service to its conference operator customers constitutes DS3 "special access" service, and such service is not eligible for High Cost support. *IAD Report* at 60, 71. While it is correct that special access service is not supported by USF, it is demonstrably incorrect that Aventure's service to its conference operator customers can be so classified. As discussed in subsection (E) below, NECA's Loop Count Guide allows for the reporting of high-capacity PRI ISDN lines as eligible for High Cost support. This practice means that IAD's contention that all high capacity circuits are special access, and must be excluded from USF-eligible line counts, cannot be sustained.

Moreover, NECA expressly has found that channelized high capacity circuits are fully eligible for High Cost support. In a NECA presentation entitled "Universal Service Fund, Loops, Lines and Miscellaneous," NECA defines loops that are, and are not, eligible for High Cost support. A copy of the NECA presentation is appended to this letter at Attachment 1. NECA begins by acknowledging that "The loop can be provisioned in many ways using a combination of technologies and transmission mediums," and includes an illustration showing home-run voice-grade copper loops, and high capacity circuits terminating to a concentrator and a remote office. NECA presentation, Attachment 1, at slide 8. The latter example reflects Aventure's network. The NECA presentation goes on to explain:

- Category 2 – Wideband
 - A communication channel of a bandwidth equivalent to twelve or more voice grade channels. For example:
 - DS1
 - DS3
 - SDSL > 768 Kbps (Data Only)
 - ADSL (Data Only)

- Does not include channelized services provided over a T1 facility.
For example:
 - 14 voice grade services provisioned over a T1 facility
 - ISDN
 - Local Digital Transport Service ("Super Trunk") or like service

NECA presentation, Attachment 1, at slide 16 (emphasis added). The NECA presentation correctly reflects industry practice, and Adventure's line-reporting practices have been fully compliant with the NECA approach at all times.

D. Since 2001, The FCC Consistently Has Recognized That Calls Terminated To Conference Operators And Chat Lines Are Switched Access Service

In 1996, AT&T filed formal complaints before the FCC against three rural LECs. Each AT&T complaint charged that the practice of invoicing tariffed per-minute switched access charges for calls delivered to chat line operators was unreasonable. In a series of decisions in 2001 and 2002, the FCC rejected all three AT&T complaints, and allowed the LECs to collect their tariffed per-minute switched access charges for such traffic. *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002).

The next time the FCC expressly addressed the classification of calls terminated to chat lines and conference operators was in 2007. In May, 2007, Qwest brought a formal complaint against an Iowa ILEC, contesting the collection of access charges on calls terminating to conference operators. Later that year, the FCC issued its order in *Qwest Commc'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 22 FCC Rcd 17973 (2007) ("*Farmers & Merchants Order*"), finding that Farmers and Merchants exceeded its rate of return, but that its tariff was effective, and "deemed lawful." Because the tariff was lawful, it could be enforced, and Farmers and Merchants could collect its tariffed, per minute switched access rates for terminating calls to conference operators.

In November, 2009, the FCC issued its second order on reconsideration of the *Farmers & Merchants Order*, and reversed its finding that the Farmers and Merchants tariff was lawful. The FCC explained that it received new evidence that the ILEC "backbilled" its customers for services during the course of the litigation. The FCC never went further, either to define the service, or to determine if switched access rates could be collected – the parties subsequently settled their dispute, and the FCC dismissed the case with prejudice. *Qwest Commc'ns Corp. v. Farmers and Merchants Mut. Tel. Co.*, 27 FCC Rcd 9377 (2012). Thus, the *Qwest v. Farmers and Merchants* case proceeded from an initial finding that the termination of calls to conference operators constitutes switched access service, and never reversed that decision. To the extent that a carrier may not be

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able to enforce payment under its switched access tariff for such traffic, the FCC must make a specific finding to that effect. Of course, the FCC has never made such a finding against Adventure, and at all times relevant to the IAD audit, and continuing to date, Adventure has had a valid, and enforceable switched access tariff on file.

And as Adventure discussed at length in its Opposition, the FCC's 2011 decision in its *Connect America Order* explicitly found that calls to conference operators are switched access services, billable at per-minute switched access rates. *Connect America Fund*, 26 FCC Rcd 17663, 17877-82 (2011). Thus, in every case in which the FCC has addressed the classification of calls terminated to conference operators and chat line services – from 2001 through 2011 – it has consistently found that the service is switched access service, billed at per minute switched access rates. In light of this established line of precedent, the IAD may not interpret the FCC's rules to hold that the same lines must be classified as special access.

Finally, as discussed in Section VI below, even the Iowa Utilities Board has confirmed that Adventure's termination of calls to its conference operator customers constitutes switched access service. Adventure consistently has demonstrated that rulings by the IUB do not constitute directly applicable precedent, because those rulings apply Iowa state law, and that past rulings have been inconsistent with FCC rules and policies. However, the IUB's decisions lend support to Adventure's position that its services are switched access service. As noted below, the IUB has defined the termination of calls to conference operators and chat lines as "High Volume Access Service" and has opened a new proceeding to prescribe switched access rates that will be tariffed and enforced for the provision of such service. In this regard, the IUB decisions are fully consistent with the established FCC precedent discussed above, and support the conclusion that Adventure's service is switched access, not special access.

E. The IAD Report Admits That Voice-Grade Lines Delivered Over High-Capacity Circuits Are Eligible For High Cost Support, And This Conclusion Is Supported By The NECA Loop Count Guide

The *IAD Report* refers to the NECA Loop Count Guide, and notes that Primary Rate Interface Integrated Services Digital Network ("PRI ISDN") circuits should be reported as five loops. *IAD Report* at 7, 61. This admission directly undercuts the *IAD Report*. IAD acknowledges, as it must, that NECA's rules confirm that PRI ISDN lines are eligible for High Cost support, even though they are high capacity circuits. This cannot be squared with the IAD conclusion that none of Adventure's high capacity circuits are eligible for High Cost support. It is true that NECA does not allow High Cost recovery for the maximum of 24 voice-grade equivalent lines that could be carried by a PRI ISDN circuit – it allows reporting of only 5 lines per PRI. However, IAD holds that Adventure cannot report any circuits at all, and this conclusion cannot be sustained in light of NECA's established practice for PRI ISDN circuits.

IV. THE IAD REPORT'S FINDING THAT AVENTURE'S CALLS DO NOT "TERMINATE" AND THAT IT HAS NO "END USER" CUSTOMERS IN ITS SERVICE AREA IS HOPELESSLY CONFUSED AND CONTRAVENES FCC RULINGS

Aventure's Opposition notes that the Draft DEW is "confusing" because it makes assertions that Aventure's calls do not "terminate" at any "end user's premises." Opposition at 17. The Opposition demonstrates that these assertions are not true, and moreover, IAD never explained what relevance these assertions have to the eligibility of high cost support. The IAD Report spends eight pages addressing this issue, but manages only to make its position even more confused.

A. The IAD Report's Conclusions That Aventure Has No "End Users" In Its Service Territory, And That Its Calls Do Not Terminate At The Conference Bridges In Its Salix Facility, Directly Violate The FCC's Rulings

The *IAD Report* starts by admitting that "the word 'terminate' is not explicitly defined in the audit finding," (IAD Report at 62), but asserts that Aventure is "fully aware of its meaning." *Id.* Aventure can attest that this is not the case – in fact the *IAD Report's* arguments regarding "termination" of traffic and whether Aventure has "end users," and what their location might be, is incomprehensible.

It appears that the *IAD Report* is pursuing the following argument:

- IAD acknowledges that the conference bridge equipment resides at Aventure's Salix central office. *Report* at 62.
- However, "the billing address of the FCSC customers as well as the billing address of the actual end-users who call into the conference calling lines are located in areas outside the Beneficiary's service, area, including other states." *Report* at 63.
- "While the conference bridge equipment resides at the central office in Salix, Iowa, the actual end-user is not located in the Beneficiary's designated service area." *Report* at 62. One FCSC bill produced in the audit showed the corporate billing address in New Jersey. *Report* at 63.
- "IAD determined during the audit that the Beneficiary assigned the NPA-NXX of the FCSC lines by number availability and customer request, not by the actual location of the customer." *Report* at 62. Nevertheless, the *Report* appears to find that what it defines as the "end user" location is the determining factor, and concludes that "the Beneficiary may

not claim support for High Cost Program purposes outside of its designated service area.”
Id.

IAD apparently believes that the “real” end user is the person who originates the call into the conference bridge, and that person is typically out of state. Because these callers are not located in Salix, Aventure is claiming High Cost support for areas outside its service area.

The FCC has already rejected this interpretation of “end users” and the location of call terminations in the context of conference calling. In its decision in the first *Farmers and Merchants Order*, Qwest made exactly the argument that IAD appears to have adopted in its *Report*. The FCC rejected the Qwest argument, and noted that to accept it would produce “anomalous results” which the FCC explains in detail:

32. Qwest argues that calls to the conference calling companies are ultimately connected to -- and terminate with -- users in disparate locations. According to Qwest, when a caller dials one of the conference calling companies' telephone numbers, the communication that he or she initiates is not with the conference calling company, but with other people who have also dialed in to the conference calling company's number. Qwest argues that such calls terminate at the locations of those other callers, and that Farmers is providing a transiting service, not termination. Farmers' view of the calls, however, is that users of the conference calling services make calls that terminate at the conference bridge, and are connected together at that point. We find Farmers' characterization of the conference calling services to be more persuasive than Qwest's.

33. Qwest's view of how to treat a conference call leads to anomalous results. For instance, suppose parties A, B, C, and D dial in to a conference bridge. According to Qwest, A has made three calls, one terminating with B, one with C, and one with D. But in fact, B, C, and D have actually initiated calls of their own in order to communicate with A. What Qwest calls the *termination* points are actually *call initiation* points. Moreover, under Qwest's theory, the exchange carriers serving B, C, and D would all be entitled to charge terminating access. In fact, each of those carriers would be entitled to charge terminating access three times -- B's carrier could charge for terminating calls from A, C, and D, and so forth. This conference call with four participants would incur terminating access charges twelve times. Qwest has not addressed this logical consequence of its theory, nor has it offered any evidence that conference calls are treated as terminating with the individual callers for any purpose beyond the circumstances of this case.

Id. at 17985-86, ¶¶ 32-33 (footnotes omitted) (emphasis in original). As the *IAD Report* correctly notes, parts of the FCC's ruling were later changed on reconsideration – but not this conclusion. The FCC's ruling, and its explanation for it, clearly demonstrates that IAD's reference to originating callers as "end users" and the point of termination being the calling party's location is nonsensical.

Despite its preference for originating callers as "end users," IAD also appears to be arguing that the FCSC may also be an end user. IAD admits that the FCSCs all have their conference bridges located in Salix. (*Report* at 62.) But it appears to argue that, if the FCSC's corporate billing address is outside of Salix – say, in New Jersey – somehow Adventure is seeking High Cost support for New Jersey, and not Salix. This argument is similar to IAD's other "end user" argument, and is equally unsupportable. The FCC's decision in the *Farmers and Merchants Order* expressly finds that calls to conference bridges terminate at those bridges, and not at any other point.

Finally, the *IAD Report* asserts that an Adventure Officer "verbally admitted to IAD that . . . there were no end-users located in the Beneficiary's designated study area." *Report* at 62. Adventure vehemently denies making any such admission. As discussed above, IAD admits that all conference equipment is located in Salix, within the Adventure service area. Adventure's business is to terminate the calls to that conference equipment, and the corporate offices of Adventure's FCSC customers, or the locations of the originating callers, have nothing to do with the terminating point of the traffic. Adventure consistently has argued before the IUB, the FCC, and the Iowa federal district courts that its FCSC customers are end users, and that its calls terminate at their conference bridges in Adventure's Salix facility.

B. Adventure Has Already Demonstrated That The IUB Decision Used As Support For The IAD Report Cannot Support The Conclusion That Adventure Does Not "Terminate" Calls In Its Service Area, And Has No "End User" Customers There

The WEB, and the *IAD Report*, rely extensively on a 2008 decision by the Iowa Utilities Board for their conclusions that Adventure does not "terminate" service in its service area, that it has no "end user" customers in its service area, and that its loops are not "revenue producing." *IAD Report* at 62-63, 76. In its Opposition, Adventure demonstrated in detail that the 2008 IUB decision cannot be considered instructive precedent because it is based exclusively on Iowa state law, and is inconsistent with FCC rulings. Adventure Opposition at 10-12.

The *IAD Report* attempts to justify its reliance on the IUB's 2008 order by stating that "intrastate services are included in the calculation of incumbent carriers' line costs, which determines High Cost Program support." Report at 68. This is irrelevant. Intrastate costs form the basis of NECA cost studies for incumbent LECs. However, this has nothing to do with the IUB's policies regarding carrier interconnection and the IUB's decisions concerning Aventure, and there is nothing in the record of the instant case that demonstrates otherwise. Finally, as discussed in Section VI below, since its 2008 order, the IUB has issued two subsequent orders, including one that initiated an ongoing proceeding, that supersede and effectively reverse the 2008 order. The *IAD Report* does not, and cannot, justify its reliance on the 2008 decision by the Iowa Utilities Board.

Moreover, the FCC long-ago completely deregulated the relationship between carriers providing interstate service and their end user customers: "[W]e continue to abstain entirely from regulating the market in which end-user customers purchase access service."³ IAD and USAC do not have the authority to adopt rules and policies that govern an end user relationship that the FCC has expressly deregulated. Indeed, the FCC does not have any rules of general applicability that regulate how regulated carriers of interstate service sell access services or local services to their customers. Moreover, the FCC's *Connect America Order* makes clear that, as a general rule, the FCC considers any form of revenue sharing agreement, written or oral, to be adequate. See discussion and quote from Section IV(c), immediately below. For all these reasons, the *IAD Report's* analysis is fatally flawed.

C. The IAD Report Wrongly Dismisses The FCC's Connect America Order As Controlling Precedent

The Aventure Opposition cited the FCC's *Connect America Order* (referenced in the *Report* and the Aventure Opposition as the "USF/ICC Transformation Order") for a number of propositions. First, that any inquiry into whether calls to conference operators "terminate" and whether conference operators are "end users," has been resolved by the *Connect America Order*. Also, any inquiry into whether Aventure billed and collected charges from its FCSC customers is irrelevant, because the *Connect America Order* expressly rejects any specific form or level of billing and collection, as a requisite for defining "end users." As Aventure demonstrated in its Opposition, the *Order* expressly accommodates any "access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party. . . ." Opposition at 9, citing *Connect America Order*, 26 FCC Rcd at 17878, ¶ 669.

³ *Access Charge Reform*, Seventh Report and Order, 16 FCC Rcd 9923, 9938 (2001). RPP/582546.1

IAD denies that the *Connect America Order* has any precedential value to its *Report*. IAD admits that the *Order* "did revise the supported services," but contends that it can ignore the *Order* because it took effect at the end of the audit period, and because its rulings are prospective. *IAD Report* at 66. IAD demonstrably misreads the *Connect America Order*.

IAD is correct in noting that the new rules regarding access stimulation service – defining calls to conference operators and chat lines as a new category of switched access service, and prescribing new rates for such services – had prospective effect. But this does not mean that those same services existed in a regulatory vacuum prior to December 30, 2011. Rather, the *Connect America Order* confirmed that access stimulation services are switched access services, subject to the same tariff and "benchmark rate" regulatory structure that the FCC established for CLECs in 2001⁴:

We maintain the benchmarking approach to the regulation of the rates of competitive LECs. . . . There is insufficient evidence in the record that abandoning the benchmarking approach for competitive LEC tariffs Instead, we believe it is more appropriate to retain the benchmarking rule but revise it to ensure that the competitive LEC benchmarks to the price cap LEC with the lowest rate in the state, a rate which is likely most consistent with the volume of traffic of an access stimulating LEC.

Id. at 17887-88 ¶ 694 (emphasis added).

Further evidence that the *Connect America Order* confirms that calls to conference operators and chat lines have been regulated as switched access services is found in several other FCC rulings. In 2001 and 2002, the FCC heard three complaints against local exchange carriers that terminated calls to chat lines and conference bridges. In each case, it found that the federal access tariffs applied to the service, and upheld the application of access charges to the services.⁵ *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002). As a result, it does not matter that the *Connect America Order* took effect at the end of the IAD audit, or that its rules revising the types of rates LECs can charge for calls to conference operators had prospective effect. The line of decisions from the *Jefferson*, *Frontier*, and *Beehive* cases of 2001-2002, through the *Farmers and Merchants Order* of 2007, to the

⁴ In 2001, the FCC adopted regulations governing the switched access rates that CLECs charge long distance carriers. Those rules required that CLECs set their rates at a "benchmark" that reflected the rates charged by the incumbent LEC that provided service in the same area served by the CLEC. *Access Charge Reform*, Seventh Report and Order, 16 FCC Rcd 9923 (2001).

⁵ *AT&T Corp. v. Jefferson Tel.*, 16 FCC Rcd. 16130 (2001); *AT&T Corp. v. Frontier Commc'ns of Mt. Pulaski, Inc.*, 17 FCC Rcd 4041 (2002); *AT&T Corp. v. Beehive Tel. Co., Inc.*, 17 FCC Rcd 11641 (2002). RPP/582546.1

Connect America Order of 2011, all confirm that calls to conference operators are switched access service that terminates to end users just like any other voice-grade access service. IAD does not have the authority to find otherwise.

V. **THE IAD REPORT'S FINDING THAT ADVENTURE'S REPORTED LINES ARE NOT "REVENUE PRODUCING" IGNORES THE EVIDENCE ON THE RECORD AND CONTRAVENES FCC DECISIONS AND INDUSTRY PRACTICE**

The *IAD Report* finds that Adventure did not adequately bill its end user customers for service, and refuses to recognize the billed access charges that are the subject of three collection actions in federal district court. It therefore concludes that Adventure's lines are not "revenue producing" and therefore are ineligible for High Cost support. This conclusion must be reversed on three separate grounds.

First, under the FCC's rules and policies, any agreement of value between a local exchange carrier and a conference operator is deemed a valid form of "access sharing" agreement. Opposition at 9, citing and quoting from the FCC's *Connect America Order*. Given the FCC's extraordinarily broad definition of "access sharing," the IAD cannot find that Adventure's relationships with its conference operator customers are noncompensatory.

Second, Adventure has billed for interstate switched access charges, and is pursuing collection actions against the long distance carriers to recover them. Opposition at 8. While the IAD Report takes issue with Adventure's failure to discount the potential recovery amount (at 65-66), IAD offers no rationale for assigning a collection likelihood of zero.

Finally, as NECA has made clear, a carrier does not have to bill or collect any amount in order to report a "revenue producing loop." The NECA presentation, "Universal Service Fund, Loops, Lines and Miscellaneous" expressly addresses the definition of "revenue producing" loops, and makes clear that the term is defined broadly. The NECA presentation states:

Revenue Producing – The term "revenue producing" means the loop can access the local and toll networks and messages are being recorded, regardless of who the user is and whether or not the company is billing for service.

Non-revenue producing loops are never counted

- Test Circuits
- PBX battery or generator feeds
- Spares

NECA presentation, Attachment 1, at slide 11 (emphasis added). For all these reasons, the *IAD Report's* conclusion that none of Adventure's loops are "revenue producing" must be reversed.

VI. AT ALL TIMES RELEVANT TO THE IAD'S AUDIT, ADVENTURE HAS BEEN, AND CONTINUES TO BE, DESIGNATED AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER BY THE IOWA UTILITIES BOARD

The *IAD Report* states that, in a 2008 order, the Iowa Utilities Board ("IUB") "asserted that the Beneficiary's 'eligibility is at issue in open dockets before the Board [IUB] and FCC.'" *Report* at 10 and n.8. The IAD does not explain the significance of this statement, or explain what role the IUB's assertion played in IAD's conclusions. The same IUB order is cited again, this time in the "USAC IAD Response" section of the *IAD Report*. In this section, IAD states that "Because the IUB is responsible for determining the Beneficiary's eligibility to receive universal service fund support, the IUB's certifications and conclusions, such as those included in the IUB Order, are applicable to the IAD audit, the purpose of which was to assess compliance with the Rules." *IAD Report* at 68.

It appears that the IAD wishes to rely on the IUB dicta that is prejudicial to Adventure, while ignoring the rulings that currently apply to Adventure, and that have applied at all times relevant to the IAD audit. The IUB initially granted Adventure ETC status on March 6, 2006. Adventure Opposition at 1. That IUB order remains in effect to date – Adventure's IUB status has never been revoked by the IUB, and its current "good standing" status is accurately reflected on the USAC website.

Moreover, in response to the FCC's *Connect America Order* and a complaint filed by Adventure against the major long distance carriers, the IUB opened a new docket that will address both Adventure's complaint, and an IXC's counterclaims. Specifically, the new proceeding – IUB Docket No. FCU-11-0002 – will prescribe intrastate switched access rates that Adventure will charge IXCs for terminating their intrastate access calls to Adventure's conference operator customers. That proceeding will also evaluate Adventure's certificate of public convenience and necessity. That proceeding was initiated by IUB order dated April 22, 2011, and the most recent hearing in that docketed proceeding was held on January 28 and 29 of this year. The current IUB proceeding confirms: 1) that intrastate calls to conference operators fall under the IUB's classification of High Volume Access Service; 2) that such service is subject to intrastate switched access service, at a rate that will be prescribed by the IUB; and 3) that Adventure's status as a certificated CLEC and ETC remain in good standing, and will continue to do so unless and until the IUB rules otherwise. A copy of the IUB order is appended to this letter at Attachment 2.

The *IAD Report* selectively picks prejudicial dicta from a 2008 IUB order, while ignoring exculpatory rulings from 2011. This demonstrates that the IAD Report's conclusions and methods are outcome-driven, arbitrary and capricious, and prejudiced against Adventure. If IAD's statement that "the IUB's certifications and conclusions, such as those included in the IUB Order, are applicable to the IAD audit" is to be given effect, then the IAD must accept all rulings by the IAD. It must therefore recognize that Adventure's ETC status has been in effect at all times relevant to the audit, and remains so today. Moreover, even though the IUB decision is limited to intrastate service, the IAD must give weight to the IUB's recent rulings that calls to conference operators are intrastate switched access service, provided pursuant to Adventure's intrastate switched access tariff, and billed at per-minute switched access rates. By recognizing all the relevant findings of the IUB, and not just a selection from a five-year-old order that contained references prejudicial to Adventure, IAD must find that the IUB supports the conclusion that Adventure's reported lines are correctly reported as switched access lines – not special access, and that calls to conference bridges constitute switched access service.

VII. ADVENTURE'S RESPONSE TO MISCELLANEOUS FINDINGS

A. The IAD Report's Conclusion That Adventure's Treatment Of Its Collectibles Violates GAAP Is Unreasonable And Not Supported

The *IAD Report* supports its conclusion that Adventure's reported lines are not "revenue producing" by ignoring all of the evidence Adventure has provided regarding the access charges it has invoiced to long distance carriers, and the multiple federal court collection actions it has initiated in order to collect. IAD takes the position that Adventure should discount the invoiced amounts as "doubtful accounts" and that, by not doing so, it violates Generally Accepted Accounting Principles. *IAD Report* at 65-66.

The *IAD Report* provides no authority for these conclusions. Moreover, even if IAD was correct – and it is not – it provides no rationale for refusing to consider any of Adventure's evidence in this regard. Although it does not explain its position, IAD apparently believes that Adventure should assign some percentage likelihood of losing its collection actions, and that Adventure cannot assume a 100% likelihood of success in enforcing its federal tariff. However, by ignoring all of Adventure's evidence, IAD is imposing a supposition that Adventure is 100% likely to fail to recover any of its tariffed and invoiced access charges. This is certainly the effect of IAD's wholesale refusal to consider Adventure's evidence. IAD nowhere tries to explain how this outcome would be required by GAAP or the FCC's rules, and its position is unreasonable on its face.

B. The Intercall Order Does Not Support IAD's Conclusions

In its Opposition, Aventure cited the FCC's *Intercall* decision.⁶ In *Intercall*, the FCC found that conference operators were required to pay into the Universal Service Fund. In so finding, the FCC did not establish a regulatory classification of conference operators, or the service they provided. Instead, the FCC found that conference operators could be either providers of "telecommunications" or "telecommunications services" and in either case would be subject to making USF contributions. Aventure cited and quoted from that decision to demonstrate that the FCC recognized calls to conference operators as individual voice-grade services, and not as single, high-capacity transport circuits. Opposition at 5.

The IAD Report largely ignores this argument, and instead cites the *Intercall* order as support for its finding that conference operators are not "end users." *IAD Report* at 73-74. As discussed in Section IV, above, this is the first step in IAD's tortured conclusion that, if conference operators cannot be defined as "end users," then Aventure's service cannot "terminate" to such end users, and Aventure cannot be found to be providing service to end users in its service area, and so its lines cannot be classified as "revenue producing." In any event, *Intercall* cannot be used as IAD posits.

The *Intercall* decision found that conference operators cannot be classified as "end users" for purposes of determining who is obligated to pay into the USF. This determination is governed by § 254(d) of the federal Communications Act. *Intercall*, 23 FCC Rcd at 10731. In contrast, the issue of defining "end user" in the Iowa Utilities Board order, the *Farmers and Merchants* decisions, and the *Connect America Order* go to the rights of regulated telecommunications service providers to tariff and collect switched access charges. Under federal law, these determinations are governed by §§ 201-203 of the Communications Act. That the two have nothing to do with each other is self-evident – only providers of telecommunications services can tariff and collect access charges. On the other hand, USF contribution obligations apply to regulated carriers, unregulated private carriers, and unregulated providers of telecommunications.

The *Intercall* order remains instructive in the analysis of whether Aventure provides a single high-capacity circuit, or multiple voice-grade lines. As discussed in the Aventure Opposition, *Intercall* fully supports the Aventure position in this regard. Opposition at 5. *Intercall* also stands for the proposition that IAD cannot impose new findings on a retroactive basis. This issue is discussed further in the immediately following section.

⁶ Request for Review by InterCall, Inc. of Decision of Universal Service Administrator, 23 FCC Rcd 10731 (2008). RPP/582546.1

VIII. THE CONCLUSIONS OF THE IAD REPORT ARE NOVEL AND CANNOT BE ACCORDED RETROACTIVE EFFECT

The *IAD Report*, like the WEB upon which it is based, does not cite a single decision by USAC, the FCC or a court to support its conclusion that voice grade services terminated over a high-capacity circuit do not qualify for USF. See *Aventure Opposition* at 14. Instead, IAD quotes the language from various FCC rules, and interprets it de novo, without reference to any precedent, except for the 2008 ruling by the Iowa Utilities Board.

Aventure has repeatedly requested that IAD Staff identify the precedent upon which they base their determinations, and has received no response. Counsel for Aventure first made this request in the exit status conference regarding the draft DEW, which was held with IAD Staff on May 8, 2012. Aventure discussed the absence of precedent at length in its *Opposition to the DEW*, and took the extraordinary step of filing a FOIA request that sought disclosure of any precedent upon which IAD, USAC or the FCC relied. *Opposition at Attachment 6*. To date, Aventure has received no response.

The demonstrable lack of precedent illustrates the obvious – USAC has never made a determination re whether High Cost support can be collected on calls to conference operators delivered over high capacity facilities. Indeed, it would be highly unlikely for IAD to do so – the FCC only established the definition of access stimulation as a unique service, subject to new rules, in its *Connect America Order*, and the *IAD Report* refuses to consider that ruling because it took effect at the end of the audit period.

The *IAD Report* states that, if Aventure was connected to the conference bridges by DS1 lines, instead of DS3s, it could collect USF. *IAD Report* at 61. IAD then states in dicta that Aventure would only be able to obtain High Cost support for five voice grade lines, and cites 47 C.F.R. § 69.152(l)(2) for support. However, there is no precedent at all regarding treatment of voice grade services provisioned over a DS3 facility, or how this may translate into High Cost line reports. The *IAD Report* deals with a case of first impression, and an unprecedented finding by IAD and USAC.

In the *Intercall Order*, the FCC reversed USAC on a similarly novel determination. In that case, USAC found that conference operators were providers of telecommunications, and so had an obligation to contribute to USF. It applied that decision retroactively. The FCC reversed that part of the USAC ruling, finding that:

The record before us indicates that it was unclear to InterCall, as well as to the industry, that stand-alone providers of audio bridging services have a direct USF contribution obligation.

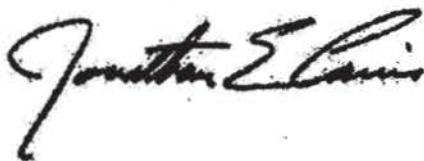
In part because of the lack of clarity regarding the direct contribution obligations of stand-alone audio bridging service providers that these actions may have created, we find that prospective application of our decision is warranted. . . . Therefore, we reverse USAC's decision requiring InterCall to file FCC Forms 499-A and 499-Q for past periods, and instead require InterCall to directly contribute to the USF as of the calendar quarter immediately following the next regularly-scheduled FCC Form 499-Q filing after the release date of this order.

Today we make clear that providers of these services have a direct contribution obligation. We further find that a uniform application of USF contribution obligations to all audio bridging service providers will promote the public interest by establishing a level playing field and encouraging open competition among providers of audio bridging services.

InterCall, 23 FCC Rcd at 10738 – 39.

The FCC's interest in avoiding surprise to affected parties, in announcing new policies and having them apply to all similarly situated parties equally, and in abiding by the requirements of the Administrative Procedures Act, should apply equally to the instant case. Because the record of this audit demonstrates that the *IAD Report* is a case of first impression, there is no basis for determining that Aventure should have acted differently than it did in the past. Indeed, Aventure's Opposition clearly demonstrates that Aventure did everything possible to determine the correct way to report its lines -- including talking to NECA Staff and USAC Staff. Retroactive application of this novel determination would violate the notice and comment provisions of the Administrative Procedures Act, would result in a discriminatory application of a new rule retroactively, and would be arbitrary, capricious and biased. For these reasons, Aventure requests that USAC reverse the IAD decision, and make its application prospective only.

Respectfully submitted,



Jonathan E. Canis